

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

In the matter of

XXXXX

Petitioner

File No. 101342-001

v

Blue Care Network of Michigan  
Respondent

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Issued and entered  
this 22<sup>nd</sup> day of December 2008  
by Ken Ross  
Commissioner

**ORDER**

**I**

**PROCEDURAL BACKGROUND**

On November 10, 2008, XXXXX, on behalf of XXXXX ("Petitioner"), filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On November 17, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request.

The Petitioner has health care coverage from Blue Care Network of Michigan ("BCN"). Her coverage is defined in the BCN 5 certificate of coverage ("the certificate"). The issue in this matter can be resolved by analyzing the certificate. It is not necessary to obtain a medical opinion from an independent review organization. The Commissioner reviews contractual issues under MCL 500.1911(7).

**II**

**FACTUAL BACKGROUND**

The Petitioner, through his podiatrist, requested authorization and coverage for orthotics,

custom molded shoe inserts to treat his foot problems. BCN denied coverage for the requested orthotics and the Petitioner appealed. The Petitioner exhausted the internal grievance process and BCN issued its final adverse determination letter dated October 31, 2008.

### **III ISSUE**

Was BCN's denial of coverage for Petitioner's shoe inserts correct under the terms of the certificate?

### **IV ANALYSIS**

#### **Petitioner's Argument**

The Petitioner has a history of congenital pes planus that causes valgus heel and midfoot pronation. Because of these conditions, he frequently twists and sprains his ankles. He saw podiatrist XXXXX, for treatment and began wearing preformed orthotics with good results. However, after the right orthotic cracked he decided he would like custom-made orthotics. Dr. XXXXX cast him for custom orthotics and submitted a claim to BCN for payment. BCN denied coverage for the custom orthotics saying they are excluded from coverage.

The Petitioner appealed. The Petitioner's podiatrist Dr. XXXXX supported the request. In a progress note dated May 31, 2008, Dr. XXXXX stated:

The patient returned to the office to be cast for custom orthotics. The patient states his arches and legs (in general) have been doing so much better since he has been wearing the perform orthotics. He stated that the right preform "cracked" and he would like to have custom orthotics made.

The Petitioner argues that the certificate excludes coverage for nonrigid appliances but his orthotic is a hard, rigid orthotic that should be covered.

The Petitioner believes that BCN should authorize and cover the orthotics because they are medically necessary and prevent additional trips to the doctor.

#### **Blue Care Network's Argument**

BCN believes it was correct in denying authorization and coverage for the orthotics. In its final determination BCN stated that shoe or foot orthotics are excluded from coverage. BCN also noted that the service was not provided by a BCN approved provider.

BCN contends its denial was appropriate under the terms of the certificate of coverage.

#### Commissioner's Review

The BCN certificate controls the analysis in this case.

The certificate describes the benefits for prosthetics, orthotics and corrective appliances in section 1.16. That section excludes from coverage "[n]on-rigid appliances and supplies such as (but not limited to) elastic stockings, garter belts, arch supports, corsets, corrective shoes, wigs or hair pieces, shoe or foot orthotics."

As a health maintenance organization, BCN is required by state law to include "basic health services" in its contracts. See MCL 500.3519. However, not all medically necessary services or devices are included in the definition of "basic health services." See MCL 500.3501(b). Coverage for orthotics and other corrective aids and appliances is not required. If an HMO covers them, it may limit that coverage as it sees fit or as a group customer requests.

Although the orthotics would improve the Petitioner's life, they are not a covered benefit under the BCN certificate. The Commissioner concludes that the foot orthotics in Petitioner's case are not a covered benefit for the Petitioner.

The Commissioner finds that BCN's final determination is consistent with its certificate of coverage.

### **V ORDER**

The Commissioner upholds BCN's October 31, 2008, final adverse determination. BCN is not required to provide coverage for the Petitioner's shoe orthotics.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order

in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.